

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 14th day of September 2006, at 8:00 P.M., and there were

PRESENT: JOHN ABRAHAM, JR. MEMBER

 JAMES PERRY, MEMBER

 RICHARD QUINN, MEMBER

 ARLIE SCHWAN, MEMBER

 ROBERT THILL, MEMBER

 JEFFREY LEHRBACH, CHAIRMAN

ABSENT: WILLIAM MARYNIEWSKI, MEMBER

ALSO PRESENT: JOHANNA M. COLEMAN, TOWN CLERK

 JEFFREY SIMME, BUILDING INSPECTOR

 JOHN DUDZIAK, DEPUTY TOWN ATTORNEY

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

PETITION OF ROBERT & SANDRA SYMONS:

THE 1st CASE TO BE HEARD BY THE ZONING Board of Appeals was that of the petition of Robert D. and Sandra L. Symons, 33 Ivy Way, Lancaster, New York 14086 for three [3] variances for the purpose of constructing a detached garage on premises owned by the petitioners at 1190 Ransom Road, Lancaster, New York, to wit:

- A. A variance from the requirements of Chapter 50, Zoning, Section 9D.(4) of the Code of the Town of Lancaster. The area of the proposed structure is 1,008 square feet.

Chapter 50, Zoning, Section 9D.(4) of the Code of the Town of Lancaster limits the area of an accessory structure to 750 square feet. The petitioners, therefore, request a 258 square foot accessory use area variance.

- B. A variance from the requirements of Chapter 50, Zoning, Section 9D.(2) of the Code of the Town of Lancaster. The height of the proposed garage is 26.5 feet.

Chapter 50, Zoning, Section 9D.(2) of the Code of the Town of Lancaster limits the height of accessory structures to sixteen [16] feet. The petitioners, therefore, request a 10.5 foot height variance.

- C. A variance from the requirements of Chapter 50, Zoning, Section 9D.(1)(b) of the Code of the Town of Lancaster. The proposed location of the garage would result in an 11.66 north side yard lot line set back.

Chapter 50, Zoning, Section 9D.(1)(b) of the Code of the Town of Lancaster requires a fifteen [15] foot north side yard lot line set back. The petitioners, therefore, request a 3.34 foot north side yard lot line set back variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Environment and Planning of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Robert D. Sanders, petitioner
33 Ivy Way
Lancaster, New York 14086

Proponent

Ed Lorenz
1202 Ransom Road
Lancaster, New York 14086

Comments/Concerns regarding drainage

IN THE MATTER OF THE PETITION OF ROBERT & SANDRA SYMONS

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. LEHRBACH, WHO MOVED ITS
ADOPTION, SECONDED BY MR. PERRY AND
MR. QUINN TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Robert & Sandra Symons and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 14th day of September 2006, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the applicants are the present owners of the premises in question.

The property for which the applicants are petitioning is within a Agricultural Residential District, (AR) as shown on the Zoning Map of the Town of Lancaster.

The Erie County Division of Planning has been notified of the proposed zoning action and has not made a recommendation.

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought; the Ransom Road area is a diverse neighborhood with a variety of structures.

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial with regard to the set back and area variances. That while the height variance is substantial, the garage will be the same height as the house.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created with regard to the garage foundation, however this should not preclude the granting of the area variance relief sought.

That the subject lot exceeds the minimum lot size required for a residence in an AR District, namely the lot size is 1.22 acres as opposed to the one [1] acre requirement of the ordinance.

**NOW, THEREFORE, BE IT
RESOLVED** that based upon these findings, the relief sought be and is hereby
GRANTED.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variances was thereupon **ADOPTED.**

September 14, 2006

PETITION OF ANTHONY B. FARACE:

THE 2nd CASE TO BE HEARD BY THE ZONING Board of Appeals was that of the petition of Anthony B. Farace, 30 Stony Brook Drive, Lancaster, New York 14086 for one [1] variance for the purpose of allowing a storage shed to remain in its existing location on property owned by the petitioner at 30 Stony Brook Drive, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 10D.(1)(a) of the Code of the Town of Lancaster to permit an existing storage shed to remain located two [2] feet from the dwelling.

Chapter 50, Zoning, Section 10D.(1)(a) of the Code of the Town of Lancaster requires an accessory structure to be located ten [10] feet from any other structure. The petitioner, therefore, requests an eight [8] foot variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Anthony B. Farace, petitioner
30 Stony Brook Drive
Lancaster, New York 14086

Proponent

IN THE MATTER OF THE PETITION OF ANTHONY FARACE

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. LEHRBACH WHO MOVED ITS
ADOPTION, SECONDED BY MR. ABRAHAM
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Anthony Farace and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 14th day of September 2006, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the applicant is the present owner of the premises in question.

The property for which the applicant is petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That the shed has been in its present location for six (6) years.

That the benefit sought by the applicant could be achieved by moving the structure, however this would not be feasible.

That the requested area variance relief is not substantial, and should not preclude the granting of the variance.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, the addition of fire rated drywall will serve to mitigate safety concerns.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

NOW, THEREFORE, BE IT

RESOLVED that based upon these findings, the relief sought be and is hereby **GRANTED** subject to the following condition which in the opinion of this board is an appropriate condition to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- That the interior of the shed shall be entirely enclosed with fire rated drywall, taped and subject to the approval of the Building Inspector of the Town of Lancaster.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED NO
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED.**

September 14, 2006

PETITION OF MICHAEL & JENNIFER BACKES:

THE 3rd CASE TO BE HEARD BY THE ZONING Board of Appeals was that of the petition of Michael and Jennifer Backes, 234 Nathans Trail, Lancaster, New York 14086 for one [1] variance for the purpose of erecting a four [4] foot high vinyl chain link fence in a required open space area on premises owned by the petitioners at 234 Nathans Trail, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot fronting on Nathans Trail with an exterior side yard [considered a front yard equivalent] also fronting on Nathans Trail. The petitioners propose to erect a four [4] foot high fence within the required open space area of the south exterior side yard fronting on Nathans Trail.

Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster limits the height of a fence or wall extending into a front yard or an exterior side yard [considered a front yard equivalent] to three [3] feet in height. The petitioners, therefore, request a one [1] foot fence height variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Jennifer Backes, petitioner
234 Nathans Trail
Lancaster, New York 14086

Proponent

IN THE MATTER OF THE PETITION OF MICHAEL & JENNIFER BACKES

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. QUINN, WHO MOVED ITS
ADOPTION, SECONDED BY MR. ABRAHAM
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Michael & Jennifer Backes and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 14th day of September 2006, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the applicants are the present owners of the premises in question.

The property for which the applicants are petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is not self created and therefore should not preclude the granting of the area variance relief sought.

That the relief requested is for the safety of the family.

NOW, THEREFORE, BE IT

RESOLVED that based upon these findings, the relief sought be and is hereby **GRANTED**-subject to the following conditions which in the opinion of this board are appropriate to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- That the fence be positioned between the residence and the sidewalk and be a minimum of five [5] feet from the sidewalk.
- That the fence height shall be four [4] feet or less.
- That the fence style shall be open and able to be seen through, a closed privacy fence shall not be permitted.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED.**

September 14, 2006

PETITION OF MARK & MIKE ALBERTI:

THE 4th CASE TO BE HEARD BY THE ZONING Board of Appeals was that of the adjourned petition of Mark and Mike Alberti, 491 Erie Street, Lancaster, New York 14086 for one [1] variance for the purpose of allowing an existing warehouse building to remain as positioned on premises owned by the petitioners at 491 Erie Street, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 20C.(3) of the Code of the Town of Lancaster for the purpose of allowing an existing warehouse building to remain as positioned with a 5.14 foot rear yard lot line set back.

Chapter 50, Zoning, Section 20C.(3) of the Code of the Town of Lancaster requires a twenty-five [25] foot lot line set back. The petitioners, therefore, request a 19.86 foot rear yard lot line set back variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Environment and Planning of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Susan King, P.E., representing the petitioner 4652 Genesee Street Cheektowaga, New York 14225	Proponent
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Mark Alberti, petitioner 491 Erie Street Lancaster, New York 14086	Proponent
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Mike Alberti, petitioner 491 Erie Street Lancaster, New York 14086	Proponent
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IN THE MATTER OF THE PETITION OF MARK & MIKE ALBERTI

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. LEHRBACH, WHO MOVED ITS
ADOPTION, SECONDED BY MR. QUINN
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster adjourned the petition of Mark and Mike Alberti on the 13th day of July 2006 for further testimony and evidence to be presented, and

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Mark & Mike Alberti and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 14th day of September 2006, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the applicants are the present owners of the premises in question.

The property for which the applicants are petitioning is within a Commercial and Motor Service District, (CMS) as shown on the Zoning Map of the Town of Lancaster.

The Erie County Division of Planning commented on the proposed zoning action as follows:

"No recommendation; proposed action has been received and determined to be of local concern."

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought; all other options are cost prohibitive.

That the petitioner has provided this board documents which estimate:

- 1.) The cost of relocating the structure.
- 2.) The cost of acquiring additional land.

That the requested area variance relief is substantial.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought. The placement of the structure is believed to be an honest mistake.

**NOW, THEREFORE, BE IT
RESOLVED** that based upon these findings, the relief sought be and is hereby
GRANTED.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED NO
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
* MR. THILL	RECUSED
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED**.

* Mr. Thill conducts business with some of the individuals and companies who have submitted documentation in this case, he has therefore recused himself from these proceedings.

September 14, 2006

PETITION OF GAIL MELBOURNE:

THE 5th CASE TO BE HEARD BY THE ZONING Board of Appeals was that of the petition of Gail Melbourne, 286 Enchanted Forest North, Lancaster, New York 14086 for one [1] variance for the purpose of erecting a four foot six inch [4',6"] high fence in a required open space area on premises owned by the petitioner at 286 Enchanted Forest North, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot located at Thomas Drive and Enchanted Forest North. The petitioner proposes to erect a four foot six inch [4',6"] high fence within the required open space areas [front yard equivalent] of Thomas Drive and Enchanted Forest North.

Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster limits the height of a fence or wall extending into a front yard or exterior side yard [considered a front yard equivalent] to three [3] feet in height. The petitioner, therefore, requests a one foot six inch [1',6"] fence height variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Gail Melbourne, petitioner
286 Enchanted Forest North
Lancaster, New York 14086

Proponent

IN THE MATTER OF THE PETITION OF GAIL MELBOURNE

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. LEHRBACH, WHO MOVED ITS
ADOPTION, SECONDED BY MR. ABRAHAM
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Gail Melbourne and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 14th day of September 2006, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the applicant is the present owner of the premises in question.

The property for which the applicant is petitioning is within a Residential District 1, (R1) as shown on the Zoning Map of the Town of Lancaster.

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought. There are numerous fences in this neighborhood and this fence will be unobtrusive.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That the requested area variance relief is not substantial.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, nor will it be an obstruction to traffic.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

NOW, THEREFORE, BE IT

RESOLVED that based upon these findings, the relief sought be and is hereby **GRANTED**-subject to the following conditions which in the opinion of this board are appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- That this is a non-privacy fence.
- That this fence is no closer than five (5) feet to the property line on Thomas Drive.
- That this fence is no closer than twenty-five (25) feet to the property line on Enchanted Forest North.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED.**

September 14, 2006

PETITION OF CHAD RUSH, RYAN HOMES:

THE 6th CASE WHICH WAS TO BE HEARD BY THE ZONING Board of Appeals was that of the petition of Chad Rush, Division Manager, Ryan Homes, 1026 Union Road, West Seneca, New York 14224 for one [1] variance for the purpose of constructing a private residence on property owned by Bal-Per Enterprises, Inc. located at 1 Rose Street, Lancaster New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 17A.(2) and (3) of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot fronting on Rose Street with an exterior side yard [considered a front yard equivalent] fronting on St. Anthony Street. The location of the proposed residence will result in a 33.28 foot east exterior side yard set back on St. Anthony Street.

Chapter 50, Zoning, Section 17A.(2) and (3) of the Code of the Town of Lancaster requires a thirty five [35] foot east exterior side yard set back on St. Anthony Street. The petitioner, therefore, requests a 1.72 foot east exterior side yard set back variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

_____None

IN THE MATTER OF THE PETITION OF CHAD RUSH, RYAN HOMES

Upon a motion duly made and seconded unanimously,

WHEREAS, the petitioner was not present to give testimony and evidence regarding this petition.

**NOW, THEREFORE, BE IT
RESOLVED** that this hearing be adjourned to allow testimony and evidence to be presented at a future date.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

This case was adjourned.

September 14, 2006

PETITION OF CHAD RUSH, RYAN HOMES:

THE 7th CASE WHICH WAS TO BE HEARD BY THE ZONING Board of Appeals was that of the petition of Chad Rush, Division Manager, Ryan Homes, 1026 Union Road, West Seneca, New York 14224 for one [1] variance for the purpose of erecting a private residence on property owned by Bal-Per Enterprises, Inc. located at 15 St. Anthony Street, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 10C.(3)(c) of the Code of the Town of Lancaster. The proposed dwelling would result in a 29.87 foot rear yard set back.

Chapter 50, Zoning, Section 10C.(3)(c) of the Code of the Town of Lancaster requires a thirty five foot [35'] foot rear yard set back. The petitioner, therefore, requests a 5.13 foot rear yard set back variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

_____None

IN THE MATTER OF THE PETITION OF CHAD RUSH, RYAN HOMES

Upon a motion duly made and seconded unanimously,

WHEREAS, the petitioner was not present to give testimony and evidence regarding this petition.

NOW, THEREFORE, BE IT

RESOLVED that this hearing be adjourned to allow testimony and evidence to be presented at a future date.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ABRAHAM	VOTED YES
MR. MARYNIEWSKI	WAS ABSENT
MR. PERRY	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

This case was adjourned.

September 14, 2006

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was adjourned at 10:11 P.M.

Signed _____
Johanna M. Coleman, Town Clerk and
Clerk, Zoning Board of Appeals
Dated: September 14, 2006